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JUL 15 2005

In re Application of
Kai Desinger
Application No. 10/726,325
Filed: December 1, 2003
Attorney Docket No. 3001

OFFICE OF PETITIONS

:
: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)
:
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This is a decision on the petition under 37 CFR 1.78(a)(3), filed on December 13, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to the prior-filed international application No. PCT/EP02/05766 set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;¹
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

¹ Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

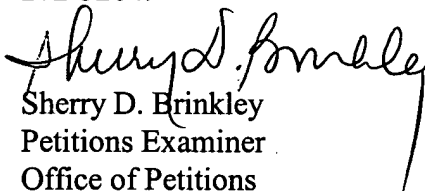
This pending nonprovisional application was filed on December 13, 2003, and was pending at the time of filing of the petition. A reference to the prior-filed PCT application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).


A corrected Filing Receipt, which includes the priority claim to the prior-filed PCT application, accompanies this decision on petition.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §§ 120, 365(c) and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

This application is being forwarded to Technology Center Art Unit 3736 for consideration by the Examiner of the amendment filed December 13, including applicant's claim under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (2) for the benefit of priority to PCT application No. PCT/EP02/005766.

Telephone inquiries related to this decision should be directed to Sherry D. Brinkley at (571) 272-3204.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions
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for Patent Examination Policy


Frances M. Hicks
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ATTACHMENT: Corrected Filing Receipt